

Posting of FOIA Policies and Guidelines Under the 2014 Michigan Freedom of Information Act Amendments

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Attempting to set “statewide standards that would govern costs for reproducing records requested under the Freedom of Information Act,” extensive and detailed amendments were made to the Michigan Freedom of Information Act, 1976 PA 442, MCL 15.231 *et seq* (FOIA), in 2014.ⁱ These amendments were enacted as 2014 PA 563, which will become effective on July 1, 2015, giving public bodies time to review and revise their procedures and policies and as well as to retrain staff in how to handle a FOIA request.

Of particular note is a new provision in Section 4(4) that requires a public body – which includes public libraries of all stripes – to establish procedures and guidelines to implement the FOIA changes and to develop a written, “easily-understood” summary for the public to explain them. While it has long been accepted that charges may be assessed for copies made under a FOIA request, MCL 15.234(1), under amendments to Section 4(1), such charges will now be possible only if the public body “has established, makes publicly available, and follows procedures and guidelines” as described by Section 4(4).

Section 4(4) further stipulates that this material must be posted on public body’s website (if there is one) and should be made available at no charge at the offices of the public body, or library, itself. Free copies must be provided “both in ... response to a written request and upon request by visitors at the public body’s office.” A website link may be supplied in response to a written request in place of paper copies.

Libraries will want to have everything vetted by their boards and legal counsel before the new FOIA requirements “go live” on July 1. Municipal libraries will also want to consult with local officials to determine the extent of their role in making, implementing and posting these changes.

A FOIA procedure summary must cover how:

1. To submit requests to the public body;
2. To understand the public body’s written response to the requestor;
3. The fee is calculated and explain any deposit requirements; and
4. To challenge or appeal a decision of the public body with respect to the request.

Although FOIA requests may be relatively few for public libraries, and some libraries already have policies posted, the changes to FOIA under 2014 PA 563 are so extensive that all policies are likely to warrant some degree of extension and revision. For example, Section 4(4) also now requires policies and guidelines to include the use of a “standard form for detailed itemization

of any fee amount in [a public body's] responses to written requests." This form should "clearly list and explain the allowable charges for each of the 6 fee components" under Section 4(1), summarized below:

1. Labor costs associated with "searching for, locating and examining ... public records in conjunction with receiving and fulfilling a granted written request," Section 4(1)(a);
2. Labor costs associated with the review of records necessary to separating and deleting exempt from nonexempt information , Section 4(1)(b);
3. Labor costs associated with duplication, including making paper and digital copies, Section 4(1)(e);
4. Costs for duplication not including labor, Section 4(1)(d);
5. Costs for copies provided on "nonpaper physical media" such as CDs or flash drives, Section 4(1)(c); and
6. Cost of mailing, Section 4(1) (f).

To read the full text of the FOIA amendments as enacted by the Michigan Legislature, see the summary and status page for HB 4001 at <http://legislature.mi.gov/doc.aspx?2013-HB-4001>. For materials describing changes concerning fees, costs, response times, documents publicly available through a public body's website, requests from indigent individuals, appeals and fines for violations of the FOIA, see bill analyses at the preceding Michigan Legislature link as well as law firm commentary, e.g. <http://www.fosterswift.com/publications-Complying-New-Freedom-of-Information-Act-changes.html>. An archived webinar presentation is also available from a local law firm <http://www.fosterswift.com/news-events-Changes-Freedom-of-Information-Act-Michigan.html>.

For a summary of the current FOIA (effective until July 1, 2015) see the Michigan Attorney General website at http://www.michigan.gov/ag/0,4534,7-164-20988_18160---,00.html and the Michigan Municipal League at <http://www.mml.org/resources/information/foia.html>.

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ⁱ House Legislative Analysis dated 5-13-13 available at <http://www.legislature.mi.gov/documents/2013-2014/billanalysis/House/pdf/2013-HLA-4001-F4FDE520.pdf> <accessed on February 20, 2015>